

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3071 of 1996

For Approval and Signature:

Hon'ble MS.JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHAGWANJI MAKANJI MODI

Versus

NAGAR PRADHAMIK SHIKSHAN SAMITI

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Appearance:

MR PB MAJMUDAR for Petitioner  
MR PRASHANT G DESAI for Respondent No. 1  
GOVERNMENT PLEADER for Respondent No. 2  
MR DA BAMBHANIA for Respondent No. 3

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CORAM : MS.JUSTICE R.M.DOSHIT

Date of decision: 04/09/97

ORAL JUDGEMENT

Petitioner herein is a primary school teacher who has retired from service on 30th June, 1992. It appears that the petitioner joined the service as such on 10th August, 1955 under the District School Board, Surat.



He, thus, served till 14th August, 1961. He left the said service by tendering resignation. The petitioner, thereafter, was offered appointment as primary school teacher on leave vacancy by the Surat Nagar Primary Education Committee, respondent No. 1 herein. It is the petitioner's claim that the petitioner served under respondent No.1 intermittently till 30th April, 1963. During this period, the petitioner was relieved from service during the vacations. The petitioner was, thereafter, offered permanent appointment by respondent No. 1 on 14th June, 1963. From 14th June, 1963, he continuously served as such till 30th June, 1992 when he retired from service on reaching the age of superannuation. The petitioner has been paid all his retirement benefits for the service rendered by him from 14th June, 1963 till 30th June, 1992. The petitioner, however, made a representation that the service rendered by him prior to 14th June, 1963 i.e. from 10th August, 1955 to 30th April, 1963 shall be considered pensionable service and the said service should be counted for the purpose of computation of his retiral benefits. The said claim made by the petitioner has been rejected by the State Government. Feeling aggrieved, the petitioner has preferred this petition. Mr. Majmudar, learned advocate appearing for the petitioner has submitted that in similar cases, one of Shri Ramanlal Naik, for the services rendered by said Shri Ramanlal Naik as a primary school teacher from 22nd July, 1948 to 25th July, 1964, was considered pensionable service. In support of his contention, he has relied upon the copy of extract of the service book of said Shri Ramanlal. He has also relied upon the order made on 29th October, 1987 [annexure-I to the petition] and has submitted that similarly in the matter of one Shri C.N.Modi, the earlier service rendered by him from 11th October, 1944 till 1st June, 1954 was considered to be pensionable service. He has, therefore, submitted that the petitioner also is entitled to a similar treatment and service rendered by him from 10th August, 1955 to 30th April, 1963 or at least service rendered by the petitioner from 16th August, 1961 to 30th April, 1963 should be considered to be pensionable service.

Mr. Majmudar relied upon rule 234, 235 and 240 of the Bombay Civil Service Rules [hereinafter referred to as "the Rules"]. Rule 234 provides that the Government servant employed on a fixed establishment which is paid by piece work may be treated as pensionable service on conditions referred to therein. Obviously, said rule can have no application in the case of the petitioner. The question of payment by piece work never



arose in the case of the petitioner. Rule 235 provides that the service in establishment duties of which are not continuous but are limited to certain fixed periods in each year is pensionable service. Obviously, this rule also shall have no application to the facts of the case. The petitioner has all along served as primary school teacher and it is not a service where the employment is offered only for a certain fixed period each year. Rule 240 defines the period which shall be treated as duty for the purpose of rule 239. Rule 239 deals with the period in respect of the service rendered prior to 1st January, 1922 which is considered pensionable service. The petitioner having joined the service in the year 1955, said rule also shall have no application to the facts of this case. Mr. Majmudar has also relied upon a Government Resolution dated 20th August, 1990 and has submitted that under the provisions contained in the said resolution, the services rendered by the petitioner prior to his resignation and on leave vacancy also requires to be considered as pensionable service. I have perused the said resolution. Said resolution has been issued in modification of another resolution passed on 31st January, 1990. It merely says that the conditions on which the service were required to be considered pensionable service are cancelled. It is further provided that the Government servant should obtain no objection certificate from the management of the earlier service. Mr. Majmudar, however, is not aware as to what were the conditions prescribed in the original resolution dated 31st January, 1990 or whether the said resolution was issued in respect of the primary school teachers. It however appears that the aforesaid resolution is issued in respect of the secondary school teachers joining the government service and their earlier service rendered in the grant in aid schools are considered pensionable on condition that they should produce no objection certificate from the management of the school concerned. Be that as it may. In absence of complete text of the resolution before the Court, such part of the resolution cannot be relied upon and no relief can be granted to the petitioner on the basis of such resolution.

2. Neither of the respondents is represented before me. However, counter affidavit has been filed on behalf of respondent No. 1. It is stated that the representation made by the petitioner was forwarded to the Government and the Government has refused to accept the claim made by the petitioner. It is further stated that on 16th August, 1961, the petitioner was offered temporary employment on leave vacancy. During the period from 16th August, 1961 to 30th April, 1963, the



petitioner had taken up employment under respondent No. 1 on leave vacancy by several separate orders.

3. It is undisputed that after having served under the district school board, Surat from 10th August, 1955 to 14th August, 1961, the petitioner had resigned from service. The factum of interruption in service between the period from 14th August, 1961 to 30th April, 1963 is also admitted. In my view, in the aforesaid facts, rule 250 of the Rules would apply. Rule 250 (a) provides for the events which causes interruption of service. Clause (i) thereof refers to the resignation of Government servant. Sub-rule (b) reads thus,

"Unless Government in any case otherwise directs an interruption of service shall entail the cancellation of all duty counting for pension."

4. Rule 248 of the Rules empowers the Government to make a general or a special order permitting services other than pensionable service for performing which a Government servant is paid from the State revenue or from a local fund to be treated as duty counting for pension. It is specific case of the respondents herein that no order has been made by the Government for considering the petitioner's earlier service as pensionable service. The petitioner having resigned from service, in view of the provisions made in abovereferred Rule 250, the service rendered by the petitioner prior to the resignation i.e. the service for the period from 10th August, 1955 to 14th August, 1961 cannot be considered as pensionable service. In my view, the claim made by the petitioner is contrary to the provisions contained in Rule 250 of the Rules and cannot be accepted unless there is specific order made by the State Government under Rule 248 of the Rules. As observed hereinabove, no such order has been made by the Government and in that view of the matter, the petitioner cannot be granted any relief.

5. In the case of Ramanlal Naik referred to by the petitioner, it appears that said Ramanlal had served as Primary Teacher for the period from July, 1948 to 25th July, 1964 and had taken up the service in the Government Secondary School on 27th July, 1964. He retired from service on 31st May, 1988. Thus, there was a two days' break in the service of said Ramanlal Naik which appears to have been condoned by the Government under its order dated 5th June, 1983. Every case of condonation of break in service shall depend upon its own facts and such incident cannot be pressed into service as precedent.



Even in the case of Shri C.N.Modi relied upon by the petitioner, it appears that said Shri C.N.Modi had served from 11th October, 1944 and on his being rendered surplus, was discharged from service on 1st June, 1954 and was again taken up in service on 12th June, 1954 resulting into ten days' break in service. Be it noted that the break in service of said Shri C.N.Modi was not caused on account of his resignation from earlier service. In my view, this incident also cannot be treated as a precedent for granting relief to the petitioner.

6. The petitioner may, however, make an application to the State Government to condone the break in his service and the Government may, under the powers conferred upon it under Rule 250(b) and Note (1) thereunder condone such break.

7. In view of the above discussion, petition is dismissed. Rule is discharged. There shall be no order as to costs.

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Vyas